IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

Kailash Chandra V/S The State of Rajasthan

S.B. Civil First Appeal No.20/1988 against the judgment and decree dated 21.11.1987 passed by Shri Gulam Hussain Additional District Judge No.1, Bharatpur in Civil Suit No. 17/82.

Date of Judgment ::: October 20, **2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mr. G.K. Garg for the appellant
Mrs.Sadhana Bhatt, Deputy Govt. Advocate

BY THE COURT:

This appeal under Section 96 CPC arises out of the judgment and decree dated 21.11.1987 passed by the learned Additional District Judge No.1, Bharatpur whereby the learned Judge has dismissed the plaintiff's suit for recovery of a sum of Rs. 15208.50.

Plaintiff Kailash Chand filed a suit for recovery of a sum of Rs. 15208.50 with the averments that he is a contractor registered with the Government of Rajasthan. Pursuant to the tenders for construction of

boundary wall for staff quarters and earth filling work in village Karvan, district Bharatpur having been invited by the Executive Engineer, Public Health & Engineering Department, Bharatpur the plaintiff submitted his tender. The plaintiff's tender for construction work of staff quarters was accepted for Rs. 74930/-, for which work order dated 5.3.77 Ex.1 was issued. Plaintiff's tender for construction of boundary wall and earth filling work was accepted at Rs. 40341/- and work order dated 1.3.77 was issued. Having received the work order, the plaintiff started collecting construction material at the site and started digging earth for foundation so as to construct boundary wall. In the mean-time, the Assistant Engineer vide his letter dated 22.4.1977 informed the plaintiff to stop the aforesaid works due to paucity of funds. Accordingly the plaintiff had to stop the work. Thereafter the plaintiff requested the Executive Engineer to get completed measurement of the work already done and to issue necessary orders for completion of remaining work and till the work is re-started, a chowkidar may be appointed to look-after the material collected by him, but no heed was paid to his

request. In the mean time, there was flood and the `Bajari' lying at the site floated and bricks etc. in huge quantity were stolen, as a result of which the plaintiff sustained huge loss on account of lapses on the part of Executive Engineer. The persons who he has paid in advance under various heads as enumerated in Schedule-`A' are not ready to return the amount paid in advance inasmuch as they are ready to supply the material and to do labour, but since the construction work has not started, therefore, the plaintiff is not required either any material or labour. The work already done prior to closure of contract has also been described in Schedule A. According to the averments of the plaint the plaintiff has claimed a sum of Rs. 14770/- on account of work already completed and advance paid to the owners of trucks, labour and bricks etc.

The defendants contested the suit by filing written statement and denied the allegations made in the plaint. The defendants have denied the averment as regards collection of material at the site and payments made in advance. The plaintiff vide his letter dated 15.3.77 had informed the department about non-

availability of truck for collection of material and, therefore, requested for extension of time. The plaintiff had neither started any work at the site nor had collected the material at the site till 22.4.1977. The defendants have specifically averred that plaintiff never requested the department to get done the measurement of the works completed.

On the basis of pleadings of the parties, the trial court framed issues and at the conclusion of trial and on hearing the parties, dismissed the plaintiff's suit vie its judgment and decree impugned in this appeal.

I have heard learned counsel for the parties and gone through the impugned judgment and the evidence on record.

A glance at the averments made in the plaint shows that plaintiff has not stated as to on which dates he collected construction material at the site. In the plaint, the plaintiff has claimed a sum of Rs. 14770/- to be paid by the defendants, on account of the loss suffered by him. However the plaintiff has, time and again, changed the amount of claims under various heads. In the letter dated 26.4.77, Ex.6 the plaintiff

has stated that he has already collected 40000 bricks and also unloaded number of trucks of bajari and `gitti' at the site and for that purpose he has paid in advance a sum of Rs. 10-12 thousands to the contractors, whereas in his letter dated 20.4.1977 Ex.8 the plaintiff has stated he has invested Rs. 20000/- as against bricks, Bajari etc. In the letter dated 30.3.1978Ex.10 the plaintiff has stated about the loss of Rs. 10000/- having been suffered by him. In the letter dated 1.5.1978, Ex.11, the plaintiff has in all claimed Rs. 5524.66 (Rs. 3788.26 as the principal sum and Rs. 1736.40 as interest) against the loses suffered by him on account of closure of work. In the notice, Ex.25, the plaintiff has claimed a sum of Rs. 14470/-, the details of which has been mentioned in the statement attached to the notice. It is thus evident that plaintiff has not been able to specifically state as to what extent he has suffered loses. The evidence adduced by the plaintiff is contrary to what he has infact claimed. That apart, the plaintiff has stated that Executive Engineer has inspected the material lying at the site. However, the said Executive Engineer has not been examined in evidence on behalf of the

plaintiff.

The averment as regards theft of construction material having taken place from the site appears to be vague for the simple reason that plaintiff has not lodged any report of the alleged theft. Be that as it may, the possibility of theft stands ruled out for the simple reason that a chowkidar was already appointed there to look-after the material lying at the spot. The plaintiff himself has specifically pleaded that there was a chowkidar and he was being paid Rs. 250/- for the purpose as per Schedule-A annexed with the plaint.

The documents Ex. 15 to Ex.24 i.e. bills/receipts produced in evidence by the plaintiff are concerned, suffice it to observe that these documents are not authentic and hence no evidentiary value, inasmuch as such documents, most of them are on printed papers and some of them are receipts on plain papers, can be procured at any stage.

As per the work orders dated 5.3.1977, Ex.1 and 1.3.1977 Ex.3, the plaintiff was required to start work after ten days of the receipt of work order. He was required to complete the work within 3 months and this period would be reckoned from the 10th day of

issuance of work orders. After few days of receiving work orders, the plaintiff vide his letter dated 15.3.1977, Ex.A/3 informed the defendants that because of non-availability of trucks, he is not in a position to take the materials to the site. He stated that the trucks are engaged in parliamentary elections and probably they would be free by 25.3.1977 and therefore, time may be extended till then. Two days prior to the time sought to be extended, the plaintiff vide letter dated 23.3.77 again sought extension of two months' time on the ground that labours are engaged in harvesting. Therefore, admittedly the plaintiff was not in a position to collect construction material at the site till 25.5.1977 and to it the defendant vide his letter dated 22.4.1977, Ex.2 has informed the plaintiff that the work of compound wall HA type & Line hutment at Karva need not be taken till further orders due to paucity of funds, for which the defendant had a right.

The trial court has taken into consideration the entire evidence adduced on behalf of respective parties in true perspective and has rightly dismissed the plaintiff's suit. Therefore, the impugned judgment and decree call for no interference.

Consequently, the appeal being devoid of merit is liable to be dismissed and it is dismissed accordingly, with no order as to costs.

(Khem Chand Sharma), J.

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